

Jurisprudencia

Detalles del asunto

ID nacional: TS (Sala de lo Civil, Sección Pleno) Sentencia núm. 241/2013 de 9 mayo

Estado miembro: España

Denominación común: Caso Ausbanc

Tipo de resolución: Resolución del Tribunal Supremo

Fecha de la resolución: 09/05/2013

Órgano jurisdiccional: Tribunal Supremo

Asunto:

Demandante: Public Prosecutor and Asociación de Usuarios de los Servicios Bancarios (Ausbanc Consumo)

Demandado: Banco Bilbao Vizcaya Argentaria, S.A.; Caja de Ahorros de Galicia, Vigo, Orense y Pontevedra; and Cajamar Caja Rural, Sociedad Cooperativa de Crédito.

Palabras clave: cessation order, consumer, consumer rights, consumer rights organisation, legitimate interest, prior information, unfair terms

Artículos de la Directiva

Injunctions Directive, [Article 3](#) Injunctions Directive, [Article 6](#), [1](#).

Nota preliminar

- 1) The right of cessation can be exercised by consumers associations.
- 2) Mortgages "floor clauses" must be considered adherence contract provisions. Lack of information on the mortgages "floor clause" renders the clause null and void but not the contract.
- 3) The mortgages "floor clause" must be considered abusive even though they are considered to be essential conditions of the contract.
- 4) Mortgages "floor clauses" cannot be included in contracts with consumers.

Hechos

This case is a well known case, as it was the precedent for many cases to come against many banks for the clauses of loan agreements establishing a minimum interest (the so-called "floor clause"). Those clauses were considered unfair in many cases. In the present case, the action against this clauses was taken by the plaintiff (a consumers association) on behalf of a large number of consumers affected by said clauses, together with the public prosecutor, advocating the general interest. The defendants alleged that this consumer association was not entitled to act on behalf of the consumers defending a general "vague" interest, since it was not registered in the Spanish Associations Registry due to a decision of the competent administrative body that disbarred it from said Registry. However, said administrative resolution excluding the plaintiff from the Registry was appealed by the latter. By the time this action was taken, the aforementioned decision had been appealed and its effects were suspended due to an interim measure.

Cuestión jurídica

- 1) Are the consumers associations entitled to defend the general public interest?
- 2) Are mortgages "floor clauses" considered adherence contract provisions?
- 3) Does the fact that mortgages "floor clauses" are considered essential conditions of the contract prevent the judges to assess if they are abusive?
- 4) Can mortgages "floor clauses" be included in contracts with consumers?

Decisión

The Court stated that, in order to exercise a cessation action, is not sufficient for a consumer association to include among its purposes the "defense of the general interest of consumers" but it also has to be registered before the State Registry of Consumer associations. This is a mandatory requirement. Having said this, the Court ruled that the consumer association had legal standing to take legal action on behalf of consumers at the moment of initiating proceedings, for the following reasons: (i) sanctions (including those of administrative nature) cannot have retrospective effects, (ii) the supervened loss of the legal conditions to initiate proceedings affect the principle "pro actione" and therefore, it has to be interpreted in a restrictive manner, (iii) this restrictive interpretation must be even more severe in cases of extraordinary legal standing on behalf of consumers, since the result affects third parties, (iv) collective consumer interests must be protected by Courts.

URL: <http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0ahUKEwi164X009vTAhXBuhQKHW8oDwkQFgg5MAM&url=http%3A%2F%2Fwww.poderjudicial.es%2Fstfis%2FPODERJUDICIAL%2FJURISPRUDENCIA%2FFICHERO%2F20130509%2520TSC%2520REC%2520485.2012.pdf&usg=AFQjCNHKFO5nRPxwh5RhITZaihGoc4GPCQ>

Texto completo: [Texto completo](#)

Asuntos relacionados

No hay resultados disponibles

Literatura jurídica

No hay resultados disponibles

Resultado

The Court accepted the legal standing of the plaintiff, hence the consumers were legitimately represented in the proceedings. The defendants are ordered to stop applying the minimum interest rate included in the mortgages "floor clauses" as these clauses did not pass the test of transparency and were declared null and void.. The court decision has no retroactive effects.